

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5297 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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RAJENDRASINH RANJITSINH GOHIL THROUGH FATHER

Versus

STATE OF GUJARAT

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Appearance:

MR MANOJ N POPAT for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

1. The petitioner was detained under the PASA by virtue of an order passed by the Commissioner of Police, Rajkot city, Rajkot on 4th March 1999 under section 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. The grounds of detention indicate that the petitioner was booked for three offences for theft of two wheelers. Statements of witnesses were recorded and the

same have been supplied to the detenue alongwith the grounds of detention. The detaining authority came to the conclusion that the detenue was a dangerous person. It was necessary to immediately to prevent him from pursuing his illegal and anti social activities. Resorting to an alternative less drastic remedy is not possible as it may not give results and therefore, detention under the PASA Act is necessary. The authority recorded that the detenue was in judicial custody and may apply for bail, may get bail and may pursue his illegal and anti social activities disrupting public order and public security.

2. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order of detention mainly on the ground that he was in custody when the order was passed and therefore, no immediate need was for the detaining authority to detain the detenue under the PASA Act. There was no material to arrive at a subjective satisfaction that the petitioner would prefer bail and may get bailed out. The detention is therefore vitiated and the petition may be allowed.

3. Mr. Prajapati, learned advocate appearing for Mr. M.N.Popat on behalf of the petitioner has restricted his arguments only on this ground.

4. Mr. H.H.Patel, learned AGP has opposed this petition. He submitted that the authorities have considered all relevant aspects and after being subjectively satisfied about the need, the order is passed.

5. It transpires from the grounds of detention that the petitioner was in judicial custody when the order was passed. It also appears considering the phraseology employed in the grounds of detention that the detaining authority had only anticipated application for bail by the petitioner and grant thereof and there was no material to arrive at a subjective satisfaction about the detenue being released on bail. In fact, the chances of preferring the bail and getting bailed out by the petitioner were non-existent when the order was passed. Therefore, in view of the principle laid down by the Supreme court in case of AIR 1989 SC 2265 in the case of Abdul Razak Abdul Wahab Shaikh v/s S.M. Sinha, Commissioner of Police, Ahmedabad, the order of detention stands vitiated.

6. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police,

Rajkot on 4th of March, 1999 in respect of the detenue Rajendrasinh Ranjitsinh Gohil, is hereby set aside. The detenue be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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